

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Michael Galpern

**DEFENDANTS**

NRDC Equity Partners, LLC (d/b/a "Lord and Taylor") and Lord and Taylor, LLC (d/b/a "Lord and Taylor")

(b) County of Residence of First Listed Plaintiff Camden

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Westchester

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

DeNittis Osefchen, P.C.

525 Route 73 North, Suite 410

Marlton, NJ 08053

856-797-9951

Attorneys (If Known)

unknown

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

Brief description of cause:

Defendants sending texts to the class in violation of the Telephone Consumer Protection Act

**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

over \$500,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**DeNITTIS OSEFCHEN, P.C.**

Stephen P. DeNittis, Esq.  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053  
(856) 797-9951  
sdenittis@denittislaw.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Michael Galpern, Individually  
and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

NRDC Equity Partners, LLC (d/b/a “Lord and  
Taylor”) and Lord and Taylor, LLC, (d/b/a  
“Lord and Taylor”)

Defendants.

Case No.:

**CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. Plaintiff Michael Galpern (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, on behalf of himself and the proposed class, to remedy the illegal actions of Defendants in transmitting unsolicited commercial text messages advertising goods and services sold under the name “Lord and Taylor” to Plaintiff and the class on their mobile telephones, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy.

2. The TCPA was designed to prevent calls and text messages like the ones described herein, and to protect the privacy of citizens like Plaintiff. **“Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.”** Mims v. Arrow Fin.

Servs., LLC, 132 S. Ct. 740, 744 (2012).

3. In enacting the TCPA, Congress intended to give consumers a choice as to how corporate similar entities may contact them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.” TCPA, Pub.L. No. 102–243, § 11. In support of this, Congress found that:

**“[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.”**

Id. at § 12; see also Martin v. Leading Edge Recovery Solutions, LLC, 2012 WL 3292838, at \*4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that **“the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....”** Id. at §§ 12-13.

5. The TCPA applies to text messages.

6. With the advancement of technology, numerous courts have recognized the TCPA’s applicability to unsolicited text messages to persons’ mobile phones.

7. Persons, like Plaintiff and the class, have no control to stop unsolicited unwanted text messages to their mobile phones.

8. Every transmission of a text uses data and the longer the text message the more data is used.

9. Once an unsolicited text message is received, not only is it a nuisance to the receiver, but as importantly, that receiver is forced to incur unwanted message and/or data

charges from their cell phone carrier.

10. As set forth herein, that is exactly what occurred to Plaintiff and other members of the putative class.

11. Plaintiff and the members of the proposed class received unsolicited sales text messages and incurred additional message and/or data charges to their mobile phone accounts because Defendants wished to advertise and market products and services sold under the name “Lord and Taylor” for their own benefit.

### **JURISDICTION AND VENUE**

12. This Court has federal question jurisdiction because this case arises out of violations of federal law.

13. Venue is proper in the United States District Court for the District of New Jersey because Plaintiff resides in Camden County, New Jersey; the unsolicited text advertisements were sent by Defendants to Plaintiff’s mobile phone in Camden County, New Jersey; and Defendants do business in, inter alia, Camden County, New Jersey.

### **PARTIES**

14. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of New Jersey who resides in Camden County. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

15. Defendant Lord and Taylor, LLC is a foreign corporation, with its principal place of business located at 424 Fifth Avenue, New York, New York, who does business in New Jersey and other states as “Lord and Taylor.” According to the New Jersey Department of State, the registered agent of Defendant Lord and Taylor, LLC is Corporation Service Company, 830 Bear Tavern Road, West Trenton, New Jersey 08628.

16. Defendant NRDC Equity Partners, LLC is a foreign corporation, with its principal place of business located at 3 Manhattanville Road, Purchase, New York 10577, who does business in New Jersey and other states as “Lord and Taylor.”

17. Collectively, Defendants Lord and Taylor, LLC and NRDC Equity Partners, LLC own and operate over 50 Lord and Taylor department stores in New Jersey and 11 other states.

**THE UNIFORM POLICIES OF DEFENDANTS  
WHICH GIVE RISE TO THE CAUSE OF ACTION**

18. Beginning on a date unknown and continuing throughout the class period from October 16, 2013 to the present, Defendants have sent advertising messages via text on mobile phones to persons regarding products and services offered by Lord and Taylor.

19. Defendants maintain two programs by which persons may consent to receive such advertising texts.

20. First, Defendants have established a program by which persons may indicate their express consent to receive advertising text messages from Defendants by texting the word “SALE” to 95555 on their mobile phone. See Attachment A, Lord and Taylor instructions, notifying individual how to sign up to receive marketing text messages from Lord and Taylor by texting the word “SALE” on the mobile phones to 95555.

21. Second, Defendants maintain a webpage entitled “Lord and Taylor Mobile Alerts” by which persons may also expressly consent to receive advertising text messages from Lord and Taylor. See Attachment B, Lord and Taylor Mobile Alerts web page.

22. The two methods described above are the only programs maintained by Defendants for seeking or obtaining express consent from mobile phone owners to receive advertising text messages from Lord and Taylor.

23. Under the TCPA, Defendants must obtain prior express consent to receive advertising text messages from each mobile phone owner before sending an advertising text message to that person's mobile phone and Defendant must keep such evidence of written consent for at least four years.

24. As a factual matter, Defendants do keep computer records which identify each cell phone owner who has either texted the word "Sale" to 95555 or who has completed and submitted the form consent to participate in the Lord and Taylor Mobile Alerts program, as described in Paragraphs 20 and 21, above.

25. Thus, Defendants are fully capable of identifying all persons who have given Defendants their express consent to receive advertising text messages from Lord and Taylor. Indeed, by using the electronically stored records maintained by Defendants, Defendants can identify all such persons easily.

26. The plain terms of the TCPA prohibit Defendants from sending advertising text messages to any person who has not completed one of the two consent processes identified in Paragraphs 20 and 21, above.

27. Despite this, Defendants maintain a uniform policy of sending unsolicited text messages of a non-emergent nature, advertising products and services offered for sale by Lord and Taylor, to persons such as Plaintiff and the class, who have never given express consent to receive such texts.

28. Specifically, Defendants maintain a policy of sending uniformly-worded advertising messages via text to mobile phones owned by Plaintiff and the class, despite the fact that Plaintiff and the class have not indicated their express consent to receive such messages in either of the two methods identified in Paragraphs 20 and 21, or in any other manner. See

Attachment C, sample text advertising messages sent by Defendants to Plaintiff between April 18, 2014 and April 23, 2014.

29. These text messages are not the result of an accident or human error.

30. Rather, because Defendants maintain complete and easily-searchable electronic records indicating each mobile phone owner who has given consent to receive text messages from Defendants, Defendants are fully aware they are sending advertising text messages to persons, such as Plaintiff and the class, who have never consented to receive such texts. Thus, these acts can only be considered a deliberate policy.

31. What happened to Plaintiff illustrates this policy.

32. At no time has Plaintiff ever texted the word "SALE" to 95555 or filled out an application to participate in the Lord and Taylor Mobile Alerts program, as described in Paragraphs 20 and 21, above.

33. Nor has Plaintiff ever given any other form of consent to receive text messages from Lord and Taylor in any other manner.

34. Despite this, on or about April 18, 2014, Plaintiff began receiving advertising messages via text on his mobile phone such as those set forth in Attachment C.

35. Typical of these was the text message he received on April 18, 2014, which stated **"L&T: Hurry! Friends & Family sale ends Monday! 20% off PLUS 10% off cosmetics w/ AAAXYAI. Details: See store."** See Attachment C.

36. The text quoted above, as well as all sample text advertisements contained in Attachment C, were sent by Defendants.

37. The text messages sent to Plaintiff's mobile phone described herein was sent via an **"automatic telephone dialing system,"** as defined by 47 U.S.C. § 227 (a)(1) and as prohibited by 47 U.S.C. § 227 (b)(1)(A).



38. The telephone number to which Defendants sent these unsolicited text messages was assigned to a mobile telephone service for which Plaintiff incurs a charge pursuant to 47 U.S.C. § 227 (b)(1).

39. The unsolicited text messages contained in Attachment C were made for general marketing purposes and were not emergent in nature.

40. The unsolicited commercial texts relating to the sale of Lord and Taylor products violated 47 U.S.C. § 227(b)(1).

### CLASS ACTION ALLEGATIONS

41. Plaintiff brings this action under Fed.R.Civ.P. 23 on behalf of a proposed class defined as:

**All owners of mobile phones within the United States who, between October 16, 2013 and the present, received any Lord and Taylor advertisement via text message on their mobile phone which was similar or identical to those attached hereto as Attachment C, where Defendants' electronic records do not show that the person submitted an online application for the "Lord and Taylor Mobile Alerts" Program or texted "SALE" TO 95555.**

42. The class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

43. The exact number and identities of the persons who fit within the proposed class are each ascertainable in that Defendants maintain written and electronically stored data identifying:

- a) Each mobile phone owner to whom Defendants sent advertising texts; and
- b) Each person who has submitted an online application for the "Lord and Taylor Mobile Alerts" Program; and
- c) Each person who has texted "SALE" TO 95555.



44. The proposed class is composed of over 10,000 persons.

45. The claims in this action arise exclusively from Defendants' uniform policies as alleged herein and from uniformly-worded texts sent via an "automatic telephone dialing system."

46. No violations alleged are a result of any oral communications or individualized interaction between any class member and Defendants.

47. There are common questions of law and fact affecting the rights of the class members, including, inter alia, the following:

**a) Whether Defendants' uniform policies and common course of conduct, as alleged herein, violated the TCPA; and**

**b) Whether Plaintiff and the class are entitled to an order for injunctive and declaratory relief, enjoining Defendants from carrying on the policies alleged herein.**

48. Plaintiff is a member of the class he seeks to represent in that he received text advertisements from Defendants during the class period, and he never submitted an online application for the "Lord and Taylor Mobile Alerts" Program or texted "SALE" TO 95555.

49. The claims of Plaintiff are not only typical of all class members, they are identical in that they arise from Defendants' uniform policies and form documents, and are based on the same legal theories of all class members.

50. Plaintiff has no interest antagonistic to, or in conflict with, the class.

51. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

52. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

53. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

54. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since, inter alia, the damages suffered by each class member were less than \$1500 per person and individual actions to recoup such an amount are not economically feasible.

55. Common questions will predominate, and there will be no unusual manageability issues.

**COUNT I**  
**NEGLIGENT VIOLATIONS OF THE TCPA 47 U.S.C. § 227 ET SEQ.**

56. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

57. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

58. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

59. Plaintiff and the class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**COUNT II**  
**KNOWING AND/OR WILLFUL VIOLATIONS**  
**OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

60. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

61. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

62. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

63. Plaintiff and the class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and members of the class respectfully pray for the following relief:

- A. Certification of the class under Fed.R.Civ.P. 23;
- B. On the First Count, as a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(2)(D), Plaintiff and each member of the Class is entitled to and requests five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B);
- C. On the Second Count, as a result of Defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(2)(D), Plaintiff and each member of the Class is entitled to and requests treble damages, as provided by statute, up to one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);
- D. An Order, pursuant to 47 U.S.C. § 227(b)(3)(A), enjoining Defendants from violating 47 U.S.C. § 227(b)(2)(D);
- E. Attorney's fees and costs; and
- F. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: May 8, 2015

**DeNITTIS OSEFCHEN, P.C.**

By: s/ Stephen P. DeNittis  
Stephen P. DeNittis, Esq.  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053  
(T): (856) 797-9951  
(F): (856) 797-9978  
[sdenittis@denittislaw.com](mailto:sdenittis@denittislaw.com)

**PARIS ACKERMAN & SCHMIERER LLP**  
Ross H. Schmierer, Esq.  
103 Eisenhower Parkway  
Roseland, NJ 07068  
(T): (973) 228-6667  
[ross@paslawfirm.com](mailto:ross@paslawfirm.com)

**LAW OFFICES OF TODD M. FRIEDMAN**  
Todd Friedman, Esquire (CA SBN: 216752)  
(*Pro Hac Vice Pending*)  
369 S. Doheny Drive, #415  
Beverly Hills, CA 90211  
(T): (877) 206-4741  
[tfriedman@attorneysforconsumers.com](mailto:tfriedman@attorneysforconsumers.com)

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: May 8, 2015

**DeNITTIS OSEFCHEN, P.C.**

By: s/ Stephen P. DeNittis  
Stephen P. DeNittis, Esq.  
525 Route 73 North, Suite 410  
Marlton, New Jersey 08053  
(T): (856) 797-9951  
(F): (856) 797-9978  
sdenittis@denittislaw.com

**PARIS ACKERMAN & SCHMIERER LLP**  
Ross H. Schmierer, Esq.  
103 Eisenhower Parkway  
Roseland, NJ 07068  
(T): (973) 228-6667  
ross@paslawfirm.com

**LAW OFFICES OF TODD M. FRIEDMAN**  
Todd Friedman, Esquire (CA SBN: 216752)  
*(Pro Hac Vice Pending)*  
369 S. Doheny Drive, #415  
Beverly Hills, CA 90211  
(T): (877) 206-4741  
tfriedman@attorneysforconsumers.com

# Exhibit A

### Lord & Taylor Terms and Conditions for 95555

The mobile operators participating in this campaign are AT&T, Verizon Wireless, Sprint, T-Mobile, Boost, US Cellular, Alltel & Virgin Mobile. If your mobile operator is not participating, you will not receive a reply to your messages. Some operators may not support some services at the prices offered. Pre-paid users may not be able to participate – Check with your mobile operator. **By texting SALE to 95555 you agree to receive up to 5 marketing text messages per month from Lord & Taylor. Text messages sent using autodialed technology to the wireless number you use to subscribe. You do not have to sign up for this program in order to buy goods or services. Message & data rates may apply. To stop a service at any time, reply STOP. To stop all services from 95555, reply STOP ALL. Text HELP to the short code to receive help information, reply HELP to any message.** Any messages you send in text messages become our property. No remuneration is implied or offered. News and data delivered are believed to be accurate at the time of delivery. For Support, email [mobilesupport@merkleinc.com](mailto:mobilesupport@merkleinc.com). For more information about Lord & Taylor promo codes and exclusions visit: <http://www.lordandtaylor.com/webapp/wcs/stores/servlet/en/lord-and-taylor/content-view/PromoCodeDetails>.

### Support

Merkle Contact Information Reach us at: [mobilesupport@merkleinc.com](mailto:mobilesupport@merkleinc.com) [www.merkleinc.com](http://www.merkleinc.com) +1 720 836 2000 US headquarters Tel: +1 443.542.4000 Our address is: Merkle 7001 Columbia Gateway Drive, Columbia, MD 21046 Email: [mobilesupport@merkleinc.com](mailto:mobilesupport@merkleinc.com)

### Privacy

Privacy statement We take great precautions to keep the information you share with us safe and private. We will not sell or give your personal information to other marketers without your express consent.

However, from time to time, we would like your permission to send you sneak previews of new products, or personalized offers or tips. You will be receiving these offers or tips only if you choose to opt-in to these services. We also may ask for comments on how to improve our products or programs. In order to do so, your information may be securely shared with our agencies, who perform these services on our behalf, or safely stored in countries other than where collected. You can easily stop this type of communication at any time by contacting us at [mobilesupport@merkleinc.com](mailto:mobilesupport@merkleinc.com).



# **Exhibit B**

*Wade Taylor*

Check out all our amazing offers right now! -

Introducing

Lord & Taylor  
Mobile!



**L&T style on the go!** Sign up for Lord & Taylor mobile text alerts and we'll keep you up-to-date with the latest L&T news, style tips and promotions created exclusively for our mobile customers. Looking fabulous – and saving money – has never been so easy.

### Sign up for Lord & Taylor Mobile Alerts

First name\*:   
Last name\*:   
Email Address\*:   
Zip/Postal Code\*:   
Mobile Number\*:

Ten digit numbers only. Do not include ( ) or -

Are you a Lord & Taylor cardholder?

☐ yes ☒ no

☒ I wish to receive email communications from Lord & Taylor.

#### \*Required fields

By submitting this form, you agree to receive up to 5 marketing text messages per month from Lord & Taylor. Text messages sent using autodialed technology to the wireless number you provide. You do not have to sign up for this program in order to buy goods or services. Message & data rates may apply. Text HELP to 95555 for help. Text STOP to 95555 to opt out. You may receive a final message confirming your decision to opt out. You also agree to and accept the [Terms & Conditions](#) and [Privacy Policy](#).

# Exhibit C

Text Message

Apr 18, 2014, 11:22 AM

L&T: Hurry! Friends&Family  
sale ends Monday! 25%  
off PLUS 10% off  
cosmetics w/AAAAXYAI.  
Details: See store.  
Msg&DataRtsAply Info?  
Txt HELP OptOut? Txt  
STOP

Apr 23, 2014, 11:19 AM

L&T: Break your fashion  
routine & save 20% on  
reg&sale w/LT card or  
15% w/AAABOZTB  
now-4/29 Details: See  
store. Msg&DataRtsAply  
Info? Txt HELP OptOut?